

## **REMARKS**

### **Double Patenting Rejection**

The Examiner provisionally rejected Claims 54-70 based on the judicially created double patenting doctrine over Claims 44-59 of parent U.S. Patent No. 5,697,909 ("909 patent") stating that although the conflicting claims are not identical, they are not patentably distinct from each other because both sets of claims claim substantially the same structure.

Applicants respectfully traverse the rejection. However, to reduce the cost and time required to obtain patent protection, a Terminal Disclaimer filed in compliance with 37 C.F.R. 1.321 is attached hereto. The Terminal Disclaimer is offered in the event the Examiner converts the provisional rejection to a rejection based on non-statutory double patenting grounds. The '909 patent and the instant patent application are commonly owned by ArthroCare Corporation.

### **Information Disclosure Statement**

Applicants enclose an Information Disclosure Statement and PTO Form 1449, with copies of the references for the Examiner's review and consideration.

Applicants would like to bring to the Examiner's attention that Applicants electronically filed 5 Information Disclosure Statements on February 4, 2005. Applicants respectfully request that the Information Disclosure Statements be considered and cited in the examination of the above-referenced application. Applicants attach copies of the Information Disclosure Statements electronically filed February 4, 2005, for the Examiner's convenience.

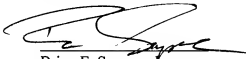
**CONCLUSION**

Applicants have made an earnest effort to place this case in condition for allowance in light of the remarks set forth above. Applicants respectfully request reconsideration in light of the remarks set forth above.

Applicants hereby authorize the Commissioner to charge \$130 for the Terminal Disclaimer and \$180 for the IDS to Deposit Account No. 50-0359 of ArthroCare Corporation. Applicants believe there are no further fees due at this time, however, the Commissioner is hereby authorized to charge any additional fees necessary or credit any overpayment to Deposit Account No. 50-0359 of ArthroCare Corporation in order to effectuate this filing.

If there are any matters concerning this Application that may be cleared up in a telephone conversation, please contact Applicants' attorney at 512.391.3961.

Respectfully submitted  
Attorney for Applicants,



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Date: 1-17-2008

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- Enclosure:
- 1) Terminal Disclaimer over Patent No. 5,697,909.
  - 2) Information Disclosure Statement and PTO Form 1449.
  - 3) Copies of IDS' filed February 4, 2005.